

[Act 2002 No 115]



New South Wales

Terrorism (Police Powers) Bill 2002

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to confer special powers on police officers to deal with imminent threats of terrorist acts and to respond to terrorist acts.

The Commissioner of Police (or other senior police officer) may, with the concurrence or confirmation of the Police Minister, give an authorisation for the exercise of those special powers:

- (a) for the purpose of finding a particular person named or described in the authorisation (the *target person*), or
- (b) for the purpose of finding a particular vehicle, or a vehicle of a particular kind, described in the authorisation (the *target vehicle*), or
- (c) for the purpose of preventing or responding to a terrorist act in a particular area described in the authorisation (the *target area*).

The authorisation enables a police officer to demand that a person give his or her name and address (and to request proof of identity) if the officer reasonably suspects that the person is the target person (or in his or her company), is in the

target vehicle or is in the target area (including entering or having just left the target area). Such a person is also liable to be searched without warrant, as is any vehicle that the officer reasonably suspects contains the target person, or is the target vehicle or that is in the target area. An authorisation also permits a police officer to enter and search, without warrant, any premises that he or she reasonably suspects contains a target person or target vehicle or that are in the target area.

In relation to any search, a police officer is authorised to seize and detain anything that the officer suspects on reasonable grounds may be used or may have been used to commit a terrorist act or may provide evidence of the commission of a serious indictable offence.

The Bill also amends the *State Emergency and Rescue Management Act 1989* to give additional powers to a police officer to quarantine a person who may have been exposed to chemical, biological or radiological contamination and to direct the person to undergo decontamination procedures. Police officers are also given powers to remove a vehicle from a danger area and to prevent a person from interfering with objects in, or removing objects from, a danger area.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 defines *terrorist act* in similar terms as in the Commonwealth Criminal Code.

Clause 4 defines certain other words and expressions used in the proposed Act.

Part 2 Authorisation to exercise special powers

Clause 5 permits the exercise of special powers to be authorised when the police officer giving the authorisation is satisfied that there are reasonable grounds for believing that there is an imminent threat of a terrorist act and that the exercise of the powers will substantially assist in preventing the terrorist act.

Clause 6 permits the exercise of special powers to be authorised when the police officer giving the authorisation is satisfied that there are reasonable grounds for believing that a terrorist act has been committed and that the exercise of the powers will substantially assist in apprehending the persons responsible for committing the terrorist act.

Clause 7 provides that the exercise of special powers may be authorised for the purpose of finding a particular person (the *target person*) or a particular vehicle (the *target vehicle*) or in relation to a particular area specified in the authorisation (the *target area*), or any combination of these. A target person may be described by the use of a photograph or drawing.

Clause 8 allows an authorisation to be given by the Commissioner of Police or a Deputy Commissioner of Police. However, if those officers are not able to be contacted and the authorisation is sought urgently, then the authorisation may be given by any officer above the rank of superintendent.

Clause 9 requires the authorisation to be given with the concurrence of the Police Minister unless the Police Minister is not able to be contacted, in which case the authorisation may be given without concurrence, but must be notified to the Police Minister as soon as he or she is available. If an authorisation is given under proposed section 5 without concurrence, it ceases to have effect after 48 hours if it is not confirmed by the Police Minister within that time.

Clause 10 allows an authorisation to be given orally but requires it to be confirmed in writing as soon as is reasonably practicable. The authorisation must specify that it is made under the proposed Act, describe the general nature of the terrorist act to which it applies, specify the target and specify the time that the authorisation ceases to have effect.

Clause 11 provides that an authorisation has effect for the time specified in the authorisation unless sooner revoked. An authorisation under proposed section 5 has a maximum duration of 7 days and may be extended, with the concurrence of the Police Minister, up to a maximum total period of 14 days. An authorisation under proposed section 6 has a maximum duration of 24 hours and may be extended, with the concurrence of the Police Minister, up to a maximum total period of 48 hours.

Clause 12 allows the authorisation to be revoked by the police officer who gave it, by a more senior officer or by the Police Minister. Revocation of an authorisation does not affect anything lawfully done in reliance on the authorisation before it was revoked.

Clause 13 prevents the validity of an authorisation from being challenged in any court or legal proceedings including an investigation into police or other conduct under any Act other than an investigation under the *Police Integrity Commission Act 1996*.

Clause 14 allows the special powers conferred by the proposed Act to be exercised by any police officer, whether or not the officer has been notified of the terms of the authorisation.

Part 3 Special powers

Clause 15 provides that the special powers conferred by the proposed Part may be exercised for the purposes for which an authorisation is given.

Clause 16 permits a police officer to require a person to disclose his or her identity if the officer suspects on reasonable grounds that the person is the target person (or the person is found in suspicious circumstances in the company of the target person), is on or in a vehicle that the officer suspects on reasonable grounds is the target vehicle, or is in the target area.

The officer may also request the person to provide proof of his or her identity.

Clause 17 permits a police officer to stop and search a person, or anything in the person's possession or control, if the officer suspects on reasonable grounds that the person is the target person (or the person is found in suspicious circumstances in the company of the target person), the person is on or in a vehicle that the officer suspects on reasonable grounds is the target vehicle or the person is in the target area. Proposed Schedule 1 applies to searches of a person conducted under this clause. A strip search is only permitted under that Schedule if the person is suspected of being the target person.

Clause 18 permits a police officer to stop and search a vehicle and anything on or in the vehicle if the officer suspects on reasonable grounds that the vehicle is the target vehicle or the officer suspects on reasonable grounds that a person on or in the vehicle is the target person or the vehicle is in the target area.

Clause 19 permits a police officer, without a warrant, to enter and search any premises if the officer suspects on reasonable grounds that the target person, or the target vehicle, may be in the premises or the premises are in the target area. A police officer who enters and searches premises must do as little damage as possible.

Clause 20 permits a police officer to seize and detain anything that the officer suspects on reasonable grounds may be used or may have been used to commit a terrorist act or may provide evidence of the commission of a serious indictable offence (whether or not related to a terrorist act). The power to seize and detain a thing includes a power to guard the thing and a power to remove the thing.

Clause 21 permits a police officer to use reasonable force in the exercise of a power under the proposed Part.

Clause 22 makes it an offence (maximum penalty 100 penalty units or 2 years imprisonment or both) to hinder a police officer in the exercise of certain powers under the proposed Part.

Clause 23 requires a police officer to provide certain information if requested to do so before, or as soon as reasonably practicable after, exercising a power under the proposed Part. The Commissioner of Police is also required to arrange for a written statement to be provided, on request made within 12 months of the search, to a person who is searched or whose vehicle or premises were searched under the proposed Part, stating that the search was conducted pursuant to the proposed Act.

Part 4 Recognised law enforcement officers

Clause 24 permits a member of the police force of another State or Territory or a member of the Australian Federal Police to be appointed as a recognised law enforcement officer in relation to the proposed Act by the Commissioner of Police or a Deputy Commissioner of Police. Such an appointment lasts for a maximum period of 14 days and may be revoked. Recognised law enforcement officers remain under the command and control of the police force to which they belong during the term of their appointment.

Clause 25 grants a recognised law enforcement officer, for the purposes of the proposed Act or matters arising under the proposed Act, the powers, immunities, liabilities and responsibilities of a police officer of the rank of constable appointed under the *Police Act 1990*.

Part 5 Miscellaneous

Clause 26 requires a report to be provided to the Attorney General and the Police Minister by the Commissioner of Police as soon as practicable after the expiry of an authorisation setting out the terms and period of the authorisation, identifying as

far as reasonably practicable the matters that were relied on for giving the authorisation, describing the powers exercised and specifying the results of the exercise of those powers.

Clause 27 requires a police officer who seizes a thing under the proposed Act to return it to the owner or person who had lawful possession of it before it was seized if the police officer is satisfied that its retention for evidence is not required and it is lawful for the person to have possession of the thing.

Clause 28 enables a court, on application by a person, to make an order that property in police custody be returned to the person or be dealt with as the court thinks fit or be forfeited to the State and may, for that purpose, adjust property rights and make findings relating to ownership and liability for expenses. Forfeited property that is money is to be paid to the Treasurer for payment to the Consolidated Fund and other property is to be sold by public auction or disposed of as the Commissioner of Police thinks fit if not sold or suitable for sale.

Clause 29 provides that police officers acting under an authorisation under the proposed Act are not to be convicted or held liable because of a defect in the authorisation or because the person who gave the authorisation lacked the jurisdiction to do so.

Clause 30 provides that nothing in the proposed Act limits a police officer's powers under any other Act and nothing in any other Act limits a police officer's powers under the proposed Act.

Clause 31 provides that the proposed Act is to bind the Crown.

Clause 32 enables the Governor to make regulations in connection with the proposed Act.

Clause 33 provides that the onus of proof of reasonable excuse in proceedings for an offence against the proposed Act or regulations lies on the accused person.

Clause 34 provides that proceedings for an offence against the proposed Act or regulations are to be dealt with summarily by a Local Court.

Clause 35 is a formal provision giving effect to the amendments to the *State Emergency and Rescue Management Act 1989* in Schedule 2.

Clause 36 provides for a review of the proposed Act to be undertaken 12 months after the date of assent to the proposed Act and every 12 months thereafter.

Schedule 1 Conduct of personal searches

Clause 1 applies the proposed Schedule to searches by a police officer under the proposed Act. The powers are similar to those in the proposed *Law Enforcement (Powers and Responsibilities) Act 2002*.

Clause 2 defines certain words and expressions used in the proposed Schedule.

Clause 3 authorises a police officer to carry out a frisk search or an ordinary search whenever the police officer is authorised to carry out a search. In a frisk search, the police officer may treat a person's outer clothing (to which the search is to be confined) as the outer clothing after a coat or jacket is removed.

Clause 4 authorises a police officer to carry out a strip search if the person to be searched is suspected of being the target of an authorisation and the police officer suspects on reasonable grounds that it is necessary to carry out such a search for the purposes of the search and that the seriousness and urgency of the circumstances require the strip search to be carried out.

Clause 5 sets out rules applying generally to personal searches that a police officer must comply with as far as is reasonably practicable in the circumstances. These include requirements to inform the person as to whether and why it is necessary to remove clothing, to ask for co-operation, to conduct the search in a way that provides reasonable privacy and is as quick as is reasonably practicable, to conduct the least invasive kind of search practical in the circumstances, not to search the person's genital area or breasts unless necessary to do so for the search purposes, to allow the person to dress as soon as the search is finished and not to question a person while searching the person. A search is to be conducted by a person of the same sex as the person being searched.

Clause 6 sets out rules applying generally to strip searches that a police officer must comply with as far as is reasonably practicable in the circumstances. These include requirements to conduct the search in a private area, not to search in view of persons of the opposite sex, not to search a person's body cavities, not to remove more clothes than necessary and for a search not to involve more visual inspection than necessary. A medical practitioner or parent or guardian may be present if the person being searched has no objection. The proposed clause also requires strip searches of children aged between 10 and 18 years of age or persons suffering impaired intellectual functioning to be carried out, if reasonably practicable, in the presence of a parent or guardian of the person being searched or other person capable of representing the interests of the person being searched.

Clause 7 prohibits strip searches of persons under 10 years of age.

Schedule 2 Amendments to the State Emergency and Rescue Management Act 1989

Schedule 2 [1] permits a senior police officer, if satisfied that there are reasonable grounds for doing so for the purposes of protecting persons from chemical, biological or radiological contamination, to direct or authorise another police officer to direct a person who may have been contaminated to remain in a particular area, to remain quarantined from other persons or to submit to decontamination procedures. **Schedule 2 [2]** makes a consequential amendment.

Schedule 2 [3] and [4] permit a police officer to remove a vehicle from a danger area and permit a police officer to direct a person not to interfere with any material or thing in a danger area or remove the material or thing from the danger area.